

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
FILED

CITY NATIONAL BANK OF WEST VIRGINIA, a national banking association, as Beneficiary of a Guaranty and Payee on a Promissory Note,

Plaintiff,

v.

JAMES C. JUSTICE COMPANIES, INC., a foreign corporation, as Guarantor of a Promissory Note, and KENTUCKY FUEL CORPORATION, a foreign corporation, as Maker of a Promissory Note,

Defendants.

2017 DEC 27 P 2:30

CATHY SLOAN, CLERK
KANAWHA COUNTY, W. VA.

Civil Action No. 17-C-1733

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COMPLAINT

For its Complaint, Plaintiff, City National Bank of West Virginia, a national banking association, states as follows:

Parties

1. City National Bank of West Virginia [“City National”] is a national banking association with its principal place of business in Kanawha County, West Virginia.
2. James C. Justice Companies, Inc. [“Justice Companies”] is a Delaware entity, licensed to do business in West Virginia as a foreign corporation, and with its principal place of business in Roanoke, Virginia.
3. Kentucky Fuel Corporation [“Kentucky Fuel”] is a Delaware entity, licensed to do business in West Virginia as a foreign corporation, and with its principal place of business in Roanoke, Virginia.

Jurisdiction and Venue

4. On August 3, 2016, City National, Kentucky Fuel, and Justice Companies entered into a Settlement Agreement [“Settlement Agreement”] in which Kentucky Fuel agreed to refinance certain amounts due under an Installment Contract dated February 21, 2013 [“Installment Contract”] entered into by Kentucky Fuel and The Tractor Company, Inc. [“Tractor Company”]. **[Exhibit A]**

5. As part of this Settlement Agreement, Kentucky Fuel entered into a Promissory Note [“Note”] with City National whereby Kentucky Fuel, as Maker, agreed to pay to City National, as Payee, the principal amount of Four Million Three Hundred Fifty Thousand Dollars and No Cents [\$4,350,000.00] **[Exhibit B]**

6. The Settlement Agreement provides, “In the event of a payment by default by Kentucky Fuel . . . City National shall have the right to collect Four Million Eight Hundred Eighty Four Thousand Nine Hundred Five Dollars and Fifty Seven Cents (\$4,884,905.57), plus all interest, late fees, and collection costs under the Note, less any amounts previously paid pursuant to the Note.” **[Exhibit A]**

7. The Settlement Agreement provides, “James C. Justice Companies, Inc., an affiliated company to Kentucky Fuels, hereby agrees to guarantee the full amount due under the Note and shall ensure payment in the event that there is a default by Kentucky Fuels under the Note.” **[Exhibit A]**

8. The Note provides, “This Promissory Note has been delivered to Payee and accepted by Payee in the State of West Virginia. If there is a lawsuit, Maker agrees upon Payee’s request to submit to the jurisdiction of the courts of Kanawha County, West Virginia.” **[Exhibit B]**

9. Pursuant to the terms of the Note, there is jurisdiction and venue in the Circuit Court of Kanawha County, West Virginia.

Factual Background

10. City National reasserts the allegations of Paragraphs 1 through 9 of its Complaint.

11. On February 21, 2013, the Tractor Company and Kentucky Fuel entered into an Installment Contract whereby the Tractor Company agreed to sell to Kentucky Fuel ten (10) Caterpillar 777F Haul Trucks having the following serial numbers: JRP02479; JRP02607; JRP02779; JRP02781; JRP02783; JRP02823; JRP02826; JRP02828; JRP2830; and JRP03003 [“Trucks”] in exchange for a total purchase price of Fourteen Million and 00/100 Dollars [\$14,000,000.00] to be paid in seventy-one (71) installments of Two Hundred Thirty-One Thousand One Hundred Fifty and Twenty Five Cents Dollars [\$231,150.25] each. [Exhibit A] In conjunction with this Installment Contract, Kentucky Fuel executed an accompanying Security Agreement granting the Trucks as collateral for payments due to the Tractor Company under the Installment Contract. [Id.]

12. The Tractor Company granted a security interest to City National Bank in the Installment Contract, pursuant to that certain Assignment of Installment Contract dated February 21, 2013, to secure amounts due from the Tractor Company to City National.

13. Thereafter, on October 20, 2015, the Tractor Company filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code with the United States Bankruptcy Court for the Western District of Pennsylvania [“Bankruptcy Court”]. [Id.]

14. Kentucky Fuel defaulted on its obligations under the Installment Contract.

15. Later, City National, Kentucky Fuel, and Justice Companies entered into a Settlement Agreement in which Kentucky Fuel agreed to refinance certain amounts due under the Installment Contract. [Id.]

16. Pursuant to the Settlement Agreement, Kentucky Fuel executed the Note in favor of City National with its repayment obligations guaranteed by Justice Companies. [Exhibits A and B]

17. The Note provides, "Commencing upon the execution of this Note, and continuing on the fifteenth (15th) day of each successive month up to and including June 15, 2012, Maker shall make monthly payments of Eighty-Two Thousand Eighty Nine Dollars and Eighty Seven Cents (\$82,089.87) . . ." [Exhibit B]

18. Kentucky Fuel failed to make its scheduled payment on or before October 15, 2017.

19. On October 16, 2017, City National sent Kentucky Fuel a Notice of Missed Payment providing it with notice that it needed to make payment within twenty (20) days of its receipt of the notice, but the October payment was not received. [Exhibit C]

20. The Note provides, "Each of the following shall constitute a default ('Default') under this Promissory Note . . . (a) Maker fails to make any payment under this Promissory Note within twenty (20) days after Maker's receipt of written notice of missed payment from Payee . . . (b) Maker fails to comply with or to perform when due any other term, obligation, covenant, or condition contained in this Promissory Note . . ." [Exhibit B]

21. On November 30, 2017, City National, through its counsel, sent a Notice of Default and Demand for Payment in Full to Kentucky Fuel that was received by Kentucky Fuel on December 4, 2017, stating as follows:

Should you not cure the arrearage prior to the expiration of twenty (20) days, the entire balance as agreed to in the Note, will be immediately due and payable in full. The Note states that upon an Event of Default, the full amount of Four Million Eight Hundred Eighty Four Thousand Nine Hundred Five Dollars and Fifty Seven Cents (\$4,884,905.57) shall be due and payable. Deducting the payments made and including interest since the date of the Note, as of November 29, 2017, Borrower owes City National Bank the following amount:

Principal	\$3,804,784.45
Accrued Interest	\$25,893.67
Payoff as of November 1, 2017 (Per Diem of \$528.44)	\$3,830,678.12

[Exhibit D]

22. The Notice of Default and Demand for Payment in Full further provides:

Interest and attorney fees will continue to accrue on this obligation until paid in full. Note that the default interest rate as set forth in the Note shall also apply upon expiration of the twenty (20) days thereby increasing the per diem amount set forth herein.

In addition to providing you with notice of default, this correspondence is intended to notify you of any right to cure that you may have pursuant to the terms of the Note and other loan documents. Please consult the Note and other loan documents to determine your right to cure, if any. If you do not make arrangements to pay the full balance of the obligation on the account to The City National Bank by December 21, 2017, City National Bank will pursue all available remedies at law and equity including, but not limited to litigation against the Borrower and Guarantor.

[Id.]

23. Neither Kentucky Fuel on its obligations as Maker under the Note nor Justice Companies under its obligations as Guarantor under the Settlement Agreement made arrangements to pay the full balance on the obligation on the account to City National on or before December 24, 2017.

Count I – Breach of Contract

24. City National reasserts the allegations in Paragraphs 1 through 24 of its Complaint.

25. The Note provides, “During the existence of an Event of Default, Payee may declare the entire unpaid principal balance on this Promissory Note and all accrued unpaid interest immediately due, without notice, and then Maker will pay an amount equal to Four Million Eight Hundred Eighty Four Thousand Nine Hundred Five Dollars and Fifty Seven Cents (\$4,884,905.57) less any payments previously made pursuant to this Note.” [Exhibit B]

26. Kentucky Fuel was in default of its obligations under the Note on or before November 1, 2017.

27. The Note provides, “During the existence of an Event of Default, Payee, at its option, may, if permitted under applicable law, increase the interest rate on this Promissory Note to a variable rate equivalent to two percentage points (2.000%) above the then current interest rate under this Promissory Note, as it may change from time to time; provided in no event will the interest rate exceed the maximum rate permitted by applicable law.” [Id.]

28. The Note provides, “The interest rate on this Promissory Note shall be fixed at a rate of Five Percent (5.00%).” [Id.]

29. Pursuant to the provisions of the Note, City National is entitled to interest of seven percent, which is equal to the statutory interest rate on judgments, on the sum of \$3,830,678.12 from the date of November 1, 2017.

30. The Note provides, “Payee may hire or pay someone else to help collect this Promissory Note if Maker does not pay. Maker also will pay Payee reasonable costs of collection. This includes, subject to any limits under applicable law, Payee's reasonable attorneys' fees and Payee's reasonable legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection

services. If not prohibited by applicable law, Maker also will pay any court costs, in addition to all other sums provided by law.”

31. Pursuant to the provisions of the Note, City National is entitled to its reasonable attorney fees, court costs, and legal expenses incurred in the preparation and prosecution of this suit for breach of contract.

WHEREFORE, City National demands judgment against Kentucky Fuel in the amount of \$3,830,678.12 from the date of November 1, 2017, plus seven percent interest on said amount on and from November 1, 2017, and its reasonable attorney fees, court costs, and legal expenses in the preparation and prosecution of this suit against Kentucky Fuel for breach of contract.

Count II – Breach of Guaranty

32. City National reasserts the allegations in Paragraphs 1 through 32 of its Complaint.

33. The Settlement Agreement among City National, Kentucky Fuel, and Justice Companies provides, “James C. Justice Companies, Inc., an affiliated company to Kentucky Fuels, hereby agrees to guarantee the full amount due under the Note and shall ensure payment in the event that there is a default by Kentucky Fuels under the Note.” [Exhibit A]

34. The Notice of Default and Demand for Payment in Full to Kentucky Fuel provided, “If you do not make arrangements to pay the full balance of the obligation on the account to The City National Bank by December 21, 2017, City National Bank will pursue all available remedies at law and equity including, but not limited to litigation against the Borrower and Guarantor.”¹ [Exhibit D]

¹ The Notice of Default and Demand for Payment was sent for overnight delivery on November 30, 2017 for delivery on December 1, 2017. However, due to a delivery error, the Notice was not received by Kentucky Fuel until December 4, 2017, making the 20 day deadline on December 24, 2017.

35. Justice Companies, "an affiliated company" to Kentucky Fuel, did not make arrangements to pay the full balance of the obligation on the account to The City National Bank by December 24, 2017.

36. Accordingly, Justice Companies has breached its guaranty obligations under the Settlement Agreement and Note.

WHEREFORE, City National demands judgment against Justice Companies in the amount of \$3,830,678.12 from the date of November 1, 2017, plus seven percent interest on said amount on and from November 1, 2017, and its reasonable attorney fees, court costs, and legal expenses in the preparation and prosecution of this suit against Justice Companies for breach of its guaranty obligations under the Settlement Agreement and Note.

CITY NATIONAL BANK OF WEST VIRGINIA, a national banking association

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